

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

ROGER'S BACKHOE SERVICE, INC.

Employer  
and

Case 33-RC-4718  
RD Directed

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 150, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION ON CHALLENGED BALLOT, DIRECTION OF HEARING  
AND NOTICE OF HEARING

This supplemental decision directs a hearing to be held to resolve issues raised by a ballot that was challenged in a representation election.

Procedural History

Following the filing of a petition on August 1, 2002 and pursuant to a Decision and Direction of Election issued on August 29, 2002, and pursuant to an Informal Settlement Agreement entered into by the parties in Roger's Backhoe Service, Inc., Cases 33-CA-14007-2 and 33-CA-14027, which was approved on January 29, 2003, an election by secret ballot was conducted on March 21, 2003, under the supervision of the Regional Director for the Thirty-Third Subregion within the following unit:

All heavy equipment operators excluding mechanics, office clerical and professional employees, guards, and supervisors as defined in the Act and all other employees.

The Tally of Ballots, copies of which were furnished to each of the parties on the day of the election, shows the results of the election were as follows:

Approximate number of eligible voters.....	4
Void ballots.....	0
Votes cast for Petitioner .....	2
Votes cast against participating labor organization.....	1
Valid votes counted.....	3
Challenged ballots.....	1
Valid votes counted plus challenged ballots.....	4

The challenged ballot is sufficient in number to affect the results of the election. Timely objections were not filed.

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations Series 8, as amended, the parties were given reasonable notice to present their positions and relevant evidence. I have considered the positions and evidence submitted and the issues raised by the challenged ballot.

#### The Challenged Ballot

The Petitioner challenged the ballot of Mike Hartman on the basis that he is a supervisor within the meaning of Section 2(11) of the Act. The Petitioner contends that the Employer previously admitted and stipulated that Hartman is a 2(11) supervisor. The Petitioner asserts that since Hartman is a 2(11) supervisor, he is ineligible to vote and his ballot should not be counted.

The Employer asserts that Hartman was transferred to the position of equipment operator effective January 27, 2003 and has worked as such since that time. The Employer concludes that since Hartman is no longer a 2(11) supervisor, he is an eligible voter and his ballot should be counted.

## Conclusion

The Petitioner's challenge to Hartman's ballot raises substantial and material factual issues which can best be resolved on the basis of record testimony and other evidence to be presented at a hearing. Accordingly,

## DIRECTION AND ORDER

IT IS HEREBY ORDERED, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, that a hearing be held to resolve the substantial and material factual issues raised by the challenged ballot.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting the hearing shall prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Regional Director as to the disposition of the issues.

Within fourteen days from when the report issues, any party may, pursuant to Section 102.69(e) of the Board's Rules and Regulations, file with the Regional Director an original and one copy of any exceptions to the report. At the same time the party files exceptions, they shall also serve a copy of the exceptions on the other parties. If no exceptions are filed, the Regional Director may adopt the recommendations of the Hearing Officer.

## NOTICE OF HEARING

PLEASE TAKE NOTICE that on April 14, 2003, and **consecutive business days thereafter until concluded**, at 9:00 a.m., at the National Labor Relations Board, Thomas M. Harvey Hearing Room, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois a hearing will be conducted before a duly designated Hearing Officer on the issues raised herein,

at which time and place the parties may appear in person or otherwise, submit testimony, and be heard on these issues.

DATED at Peoria, Illinois this 3<sup>rd</sup> day of April 2003.

/s/ Debra L. Stefanik

Debra L. Stefanik, Acting Regional Director  
National Labor Relations Board  
Subregion Thirty-Three  
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Peoria, Illinois 61602-1248